STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

DALE L. DUVERNEY, MARY J. DUVERNEY, LINDA MARIE SMITH, CAMMIE PENNINGTON, CHARLOTTE F. AVERY, LYLE RICHARD ELLIS, DOROTHY E. OWEN, DALE E. NEFF, TONI OWEN ANDERSON, ELMER M. SHEPHARD, CRAIG ROBIN CRANDELL, KAREN SUE SMITH, ELIZABETH JEAN SEATON, SHARON BARNETT, JAY P. BARNETT, CLETIS J. BISHOP, WALTER H. BRUSCH, JR., GENE RAYMOND HOY, JODY MANUEL SHEPARD, SARAH Y. WATSON, EDWIN A. BROWN, JILL ANN LANEY, GLENN MCDANIEL, ROGER ALLAN OTT II, ETTA NASH, HAROLD SPROWL and CORA GORDAN, individual Michigan taxpayers and property owners subject to the jurisdiction of BIG CREEK-MENTOR UTILITY AUTHORITY, and TOWNSHIP OF MENTOR, MICHIGAN, and TOWNSHIP OF BIG CREEK, MICHIGAN,

Plaintiffs/Appellants,

v

Supreme Court No. 123163
Court of Appeals No. 243866

123163

BIG CREEK-MENTOR UTILITY AUTHORITY, a Michigan Municipal Corporation, and TOWNSHIP OF MENTOR, MICHIGAN, and TOWNSHIP OF BIG CREEK, MICHIGAN,

Defendants/Appellees.

_____/

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DEFENDANTS' BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

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Court of Appeals, State of Michigan

ORDER

Michael R. Smolenski
Presiding Judge

Dale L. Duverney v Big Creek Mentor Utility Authority

Joel P. Hoekstra

Docket No. 243866

Jane E. Markey
Judges

The Court orders, pursuant to MCR 7.206(D), the complaint for relief under Const 1963, art 9, § 32 is DENIED for failure to state a cause of action where plaintiffs have failed to plead specific facts in support of their claimed violation of Const 1963, art 9, § 31, *Kramer v Dearborn Heights*, 197 Mich App 723, 725; 496 NW2d 301 (1993), and the documentation supplied by plaintiffs is insufficient to establish that a colorable claim exists, MCR 7.206(D)(1)(a). Plaintiffs' complaint and supporting documentation is wholly insufficient to persuade this Court that the challenged charges constitute a tax. *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998); *Graham v Kochville Twp*, 236 Mich App 141; 599 NW2d 793 (1999).

Michael R. Smolenski
Presiding Judge

STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 10 2003
Date

Sandra Schultz Mengel
Chief Clerk

RECEIVED 1-13-03

RESPONSE TO STATEMENT OF QUESTIONS INVOLVED

DEFENDANTS/APPELLEES ACCEPT PLAINTIFFS/APPELLANTS STATEMENT OF QUESTION INVOLVED.

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DEFENDANTS'/APPELLEES STATEMENT MATERIAL PROCEEDINGS AND FACTS

This action was initiated in the Michigan Court of Appeals which denied Plaintiff/Appellants complaint for relief based on a failure to state a cause of action. Specifically, the Court of Appeals indicated the pleadings did not set forth specific facts and that the documentation was insufficient to establish that a colorable claim exists.

Defendants/Appellees did adopt the Big Creek-Mentor Public Water and Sewer Ordinance # 21 in September, 2001. The ordinance is in conformance with both state law and case law. There is a mandatory connection fee which is specifically provided for and authorized by MCL 333.12751(a).

The ordinance was subject to a referendum which was published along with Notice of Intent to Issue Bonds By The Big Creek-Mentor Utility Authority, Oscoda County, Michigan on 18 January 1994 in the Oscoda County Herald. (Defendants' Exhibit A)

The sewer system was funded in large part by a grant from the United States Department of Agriculture Rural Development Grant which required as a condition of the grant mandatory connection to the system. The ordinance is hardly a revenue raising ordinance and clearly provides a benefit to each property owner connected to the system.

It should be noted that 247 of the 347 properties subject to the ordinance are already connected in Big Creek Township as are 228 of the 258 properties subject to the ordinance in Mentor Township.

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ARGUMENT

The ordinance at issue mandates and requires certain properties within the sanitary sewer district to connect to the system.

The legislative determination as set forth in MCL 333.12752 states in pertinent part:

> "The connection to available public sanitary sewer systems at the earliest reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in that public interest which is declared as a matter of legislative determination."

The connection fee is not a tax for a storm sewer as the Michigan Supreme Court held in ***Bolt v City of Lansing***, 459 Mich 152; 587 NW2d 264 (1998), this is a user fee.

There is no question that the sewer authority complied with all required statutory notices regarding adoption of the ordinance and notice to the property owners affected by the ordinance. In ***Bingham Farms v Ferris***, 148 Mich App 212; 384 NW2d 129 (1986), the Michigan Court of Appeals upheld the legality of a similar ordinance in the Village of Bingham Farms. In that case there was a problem with the notice to the property owners affected by the ordinance but once notice was perfected, the village was permitted to go forward with enforcement.

In ***Bolt***, of course, there was and is no underlying legislative determination that storm sewers are necessary for public health, safety, and welfare. Nor was there any statutory authority to allow the City of Lansing to recover the costs of the public work in the manner in which the city attempted to do so.

In this case, which deals with sanitary sewers, the legislature has deemed it a public health issue and provided by statute that local governmental units may compel connection to the system. (Defendants' Exhibit B)

The ***Bolt*** court also stated:

"Determining whether the storm water service charge is properly characterized as a fee

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> or a tax involves consideration of several factors. Generally, a "fee" is "exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit." ***Saginaw Co. v John Sexton Corp. of Michigan***, 232 Mich App 202, 206, 591 NW2d 52 (1998); ***Vernor v Secretary of State***, 179 Mich 157, 164, 167-169, 146 NW 388 (1914). A "tax" on the other hand is designed to raise revenue. ***Bray v Dep't. of State***, 418 Mich 149, 162, 341 NW2d 92 (1983).
>
> "Exactions which are imposed primarily for public rather than private purposes are taxes. Revenue from taxes, therefore, must inure to the benefit of all, as opposed to exactions from a few for benefits that will inure to the person or group assessed." (Citations omitted.)"

The Michigan Attorney General has opinioned that a statute authorizing a municipality to require a property owner to connect into a public sanitary sewer system is constitutional. Attorney General Opinion No. 5372, October 3, 1978. (Defendants' Exhibit C) This opinion was rendered just prior to the "Headlee Amendment" being passed by the voters on 7 November 1978. However, the underlying authority and analysis is as valid now as it was in the fall of 1978.

Plaintiffs have brought their complaint alleging the unconstitutionality of the ordinance despite the obvious authority granted by statute, attorney general opinion and case law and, as such, should be sanctioned pursuant to MCL 600.2591 and MCR 2.625(A)(2).

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RELIEF REQUESTED

Defendants/Appellees respectfully requests based on the facts of this case and the foregoing analysis that this Honorable Court simply deny Plaintiffs'/Appellants Application for Leave to Appeal.

There are not sufficient grounds pursuant to MCR 7.302 (B) to grant leave. Defendants/Appellees would also request an award of actual costs and attorney fees.

Respectfully submitted,

BRABANT & MANNIKKO, PLLC

Dated: February 14, 2003

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NOTICE OF INTENT TO ISSUE BONDS BY THE BIG CREEK-MENTOR UTILITY AUTHORITY, OSCODA COUNTY, MICHIGAN

NOTICE IS HEREBY GIVEN that the Big Creek-Mentor Utility Authority intends to issue revenue bonds in the principal amount of not to exceed $2,500,000 for the purpose of defraying part of the cost of acquiring and constructing a sewage collection, treatment and disposal system (the "System") to serve the townships of Big Creek and Mentor in the County of Oscoda (the "Authority District").

The bonds will bear interest from their date at a rate or rates not exceeding 10% per annum and certain of the bonds may be subject to redemption prior to maturity.

The bonds will be issued under the provisions of Act 94, Public Acts of Michigan, 1933, as amended, and a resolution of the Board of the Big Creek-Mentor Utility Authority and will be payable from the net revenues of the System and any improvements, enlargements and extensions thereto, and a statutory lien on said revenues will be established by said resolution. The Big Creek-Mentor Utility Authority will covenant and agree to fix and maintain at all times while any of the bonds shall be outstanding such rates for service furnished by the System as shall be sufficient to provide for payment of the necessary expense of operation, maintenance and administration of the System and of the principal of and interest on the bonds when due, to create a bond and interest reserve account and to provide for such other expenditures and funds for the System as are required by the resolution authorizing the issuance of bonds.

RIGHT TO PETITION FOR REFERENDUM

This notice is given, by order of the Board of the Big Creek-Mentor Utility Authority to and for the benefit of the electors and taxpayers of the townships of Big Creek and Mentor in order to inform them of their right to petition for a referendum upon the question of the issuance of the aforesaid bonds. The bonds will be issued, without submitting such a question to a vote of the electors, unless within 45 days after the date of publication of this notice, a petition requesting a referendum upon such question, signed by not less than 10% or 15,000 of the registered electors in the Authority District, whichever is less, shall have been filed with the undersigned Secretary of the Board of the Big Creek-Mentor Utility Authority. In the event that such a petition is filed, the bonds will not be issued unless and until the issuance thereof shall have been approved by the vote of a majority of the electors of the Authority District qualified to vote and voting thereon at a general or special election.

FURTHER INFORMATION

Further information relative to the issuance of said bonds and the subject matter of this notice may be secured at the office of the Treasurer of the Big Creek-Mentor Utility Authority, 311 South Morenci, P.O. Box 399, Mio, Michigan 48647.

This notice is given pursuant to the provisions of Section 33 of Act 94, Public Acts of Michigan, 1933, as amended.

Secretary Germaine Dennis
Big Creek-Mentor Utility Authority

Dated: January 12, 1994

EXHIBIT A

Michigan Digest references:
Health § 11.
Nuisances §§1 et seq.

CASE NOTES

Connection to available public sanitary sewer systems has been declared by the legislature as a matter for the protection of the public health, safety, and welfare and necessary in the public interest. Peck v Hoist (1986) 153 Mich App 787, 396 NW2d 536.

Licensed septic tank waste haulers must deposit all septic tank wastes into an available municipal sewage treatment plant if the plant is located within fifteen road miles via the nearest travel route of any serviced septic tank. Op Atty Gen, March 22, 1979, No. 5463.

A public nuisance is an activity which is either harmful to the public health, creates an interference in the way of travel, affects public morals or prevents the public from the peaceful use of their land and public streets. Op Atty Gen, March 22, 1979, No. 5463.

A septic tank waste hauler may not transport septic tank wastes to a private dumping site if wastes are collected within a county which has mandated disposal of all wastes at a municipal sewage treatment plant regardless of the distance from a treatment plant. If the county has not adopted such a local regulation or ordinance, then a waste hauler may dump the waste in a private dumping site as provided in Section 5(c). Op Atty Gen, March 22, 1979, No. 5463.

§ 333.12753. Sanitary sewage; connection to sewer; structures outside limits of governmental agencies; connections; time for completion of connection; earlier completion. [MSA § 14.15(12753)]

Sec. 12753. (1) Structures in which sanitary sewage originates lying within the limits of a city, village, or township shall be connected to an available public sanitary sewer in the city, village, or township if required by the city, village, or township.

(2) Structures in which sanitary sewage originates lying outside the limits of the city, village, or township in which the available public sanitary sewer lies shall be connected to the available public sanitary sewer after the approval of both the city, village, or township in which the structure and the public sanitary sewer system lies and if required by the city, village, or township in which the sewage originates.

(3) Except as provided in subsection (4), the connection provided for in subsections (1) and (2) shall be completed promptly but not later than 18 months after the date of occurrence of the last of the following events or before the city, village, or township in which the sewage originates requires the connection:

(a) Publication of a notice by the governmental entity which operates the public sanitary sewer system of availability of the public sanitary sewer system in a newspaper of general circulation in the city, village, or township in which the structure is located.

(b) Modification of a structure so as to become a structure in which sanitary sewage originates.

(4) A city, village, or township may enact ordinances, or a county or district board of health, may adopt regulations to require com-

EXHIBIT B

pletion of the connection within a shorter period of time for reasons of public health.

History:
Pub Acts 1978, No. 368, § 12753, eff September 30, 1978.

Former acts:
This section contains provisions substantially similar to former § 123.283.

Michigan Digest references:
Drains § 95.
Municipal Corporations § 196.

CASE NOTES

1. In general

A statute authorizing a municipality to require a property owner to connect into a public sanitary sewer system is constitutional. Op Atty Gen, October 3, 1978, No. 5372.

A city, township or village may adopt an ordinance compelling a property owner to connect into a public sanitary sewer where the structure is more than 200-feet distant from the public sewer system. Op Atty Gen, October 3, 1978, No. 5372.

2. Construction and effect

Under former statute, where available sewer line crosses municipal boundaries so as to be connectable to structures lying outside boundaries, municipality which operates sewer system may not condition its connection to properties upon annexation of such properties where connection is necessary for abatement of public health hazards. Washtenaw County Health Dep't v T & M Chevrolet, Inc. (1979) 406 Mich 518, 280 NW2d 822, 13 Envt Rep Cas 1782.

Under former § 123.283 a municipality's grant of permission to connect its sewer lines with structures located in township outside of city limits is within statutory discretion of city and may not be compelled by mandamus unless such discretion is arbitrarily and unreasonably exercised. Washtenaw County Health Dep't v T & M Chevrolet, Inc. (1979) 406 Mich 518, 280 NW2d 822, 13 Envt Rep Cas 1782.

Former statutory provision that structures in which sewage originates lying within limits of municipality shall be connected to any available public sanitary sewer in municipality if required by municipality, although conferring power on municipality to require its citizens to cease operation of potentially hazardous septic tank methods of sewage disposal and to connect to municipality's public sewer system, could not be read to confer power on any citizen from one municipality, or municipality itself, to compel another municipality to provide extraterritorial sewer service. Washtenaw County Health Dep't v T & M Chevrolet, Inc. (1979) 406 Mich 518, 280 NW2d 822, 13 Envt Rep Cas 1782.

Under former statute providing for connection to city sewage system of structures lying outside city limits where so required by township in which structures lie and upon approval of township and city, city whose sewer line ran in front of certain structures located in township outside of city limits would not be entitled to condition its approval of sewer line connection to structures upon their annexation to city where paramount public concern in abatement of public health hazard resulting from structures' current use of septic tanks and discharge of raw sewage into county drain rendered city's condition arbitrary and unreasonable exercise of its statutory discretion. Washtenaw County Health Dep't v T & M Chevrolet, Inc. (1979) 406 Mich 518, 280 NW2d 822, 13 Envt Rep Cas 1782.

Under former statute, supreme court would look to spirit as well as letter of sewer annexation statute in determining its application to city's refusal to permit connection of city sewer with structures lying outside of city limits and presenting public health hazard from discharge of septic tanks into county drain. Washtenaw County Health Dep't v T & M Chevrolet, Inc. (1979) 406 Mich 518, 280 NW2d 822, 13 Envt Rep Cas 1782.

A person owning a structure in which sanitary sewage originates which is lo-

2 of 100 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN

Opinion No. 5372

1978 Mich. AG LEXIS 47; 1977-78 Op. Atty Gen. Mich. 645

October 2, 1978

SYLLABUS:
[*1]

MUNICIPALITIES:

Requiring connection to a public sewer system

SEWERS AND SEWER SYSTEMS:

Requiring connection to public sewer system

CONSTITUTIONAL LAW:

Equal Protection

A statute authorizing a municipality to require a property owner to connect into a public sanitary sewer system is constitutional.

A city, township or village may adopt an ordinance compelling a property owner to connect into a public sanitary sewer where the structure is more than 200-feet distant from the public sewer system.

REQUESTBY:

Honorable Stanley M. Powell
State Representative
The Capitol
Lansing, Michigan

OPINIONBY:

FRANK J. KELLEY
Attorney General

OPINION:

You have asked three questions concerning *1961 PA 151;* MCLA 123.191 *et seq,* MSA 5.2767(101) *et seq;* and *1972 PA 288;* MCLA 123.281 *et seq,* MSA 5.2769(151) *et seq.* Your questions will be addressed *seriatim.*

1. Are provisions of *1972 PA 288, supra,* authorizing the adoption and enforcement by a municipality of an ordinance requiring the connection of a structure to a public sewer system located within 200 feet of the structure constitutional?

1972 PA 288, supra, provides:

EXHIBIT C

"Sec. 3. (1) Structures in which sanitary sewage originates [*2] lying within the limits of a city, village or township shall be connected to any available public sanitary sewer in the city, village or township if required by the city, village or township.

"(2) Structures in which sanitary sewage originates lying outside the limits of the city, village or township in which the available public sanitary sewer lies shall be connected to the available public sanitary sewer after the approval of both the city, village or township in which the structure and the public sanitary sewer system lies and if required by the city, village or township in which the sewage originates.

"(3) The connection provided for in subsections (1) and (2) shall be completed promptly but in no case later than 18 months after the date of occurrence of the last of the following events or before the city, village or township in which the sewage originates requires the connection:

"(a) Publication of a notice by the governmental agency which operates the public sanitary sewer system of availability of the public sanitary sewer system in a newspaper of general circulation in the city, village or township in which the structure is located.

"(b) Modification of a structure so [*3] as to become a structure in which sanitary sewage originates.

"(c) This act becomes effective.

"(4) A city, village or township, for reasons of public health, by ordinance of a county or district board of health by rule may require completion of the connection within a shorter period of time."

In *Bedford Township v. Bates, 62 Mich App 715; 233 NW2d 706 (1975)* defendant asserted that absent a showing that her septic system was inadequate, she could not be compelled under *1972 PA 288, supra,* to connect with the public sewer system.

Rejecting defendant's argument the Court of Appeals stated, *62 Mich App at 717-718; 233 NW2d at 707-708:*

"The United States Supreme Court has twice faced this issue, and twice found that the police power of a state allows this type of sewer regulation, with no compensation to property owners. *District of columbia* v. *Brooke, 214 US 138; 29 S Ct 560; 53 L Ed 941 (1909), Hutchinson v. Valdosta, 227 US 303; 33 S Ct 290; 57 L Ed 520 (1913).* In *Hutchinson, supra,* the Court noted that:

"'It is the commonest exercise of the police power of a State or city to provide for a system of sewers and to compel property owners [*4] to connect therewith. And this duty may be enforced by criminal penalties.' *Hutchinson, supra, 227 US 303, 308; 33 S Ct 290, 292; 57 L Ed 520, 523.*

"See also *Queenside Hills Realty Co v. Saxl, 328 US 80; 66 S Ct 850; 90 L Ed 1096 (1946).*

"An examination of other state court decisions reveals that mandatory connection with public sewers has been readily upheld against constitutional attack. We find the rationale of *Sanitation District No 1 of Jefferson County v. Campbell, 249 SW2d 767* (Ky, 1952), particularly convincing:

"'"The community is to be considered as a whole in the matter of preservation of the health of all inhabitants, for a failure by a few to conform to sanitary measures may inflict ill health and death upon many." Though the action of the governing boards charged with responsibility may work a hardship on one or more

individuals whose facilities may be sanitary, their action cannot be regarded as unconstitutionally arbitrary, or the taking of property without due process of law. It would seem that although properly operated private septic tanks may afford a sanitary disposal system, the publicly maintained sewage system of the whole community [*5] is undoubtedly better at doing away with potential as well as actual health menaces.' *Sanitation District No 1, supra, at 772.*"

In *Renne v. Waterford Township, 73 Mich App 685; 252 NW2d 824 (1977)* plaintiff attacked *1972 PA 288, supra,* on the ground, *inter alia,* that requiring connection of only those structures within 200 feet of an available public sewer line, *1972 PA 288* denied plaintiff equal protection of law.

To quote from the opinion of the *Court, 73 Mich App at 696-698; 252 NW2d at 848-849:*

"Plaintiffs also criticize the lower court's decision via summary judgment which rebuffed an equal protection challenge to the statute. Plaintiffs contend that a provision of *1972 PA 288* requiring sewer connection of only those structures located within 200 feet of an available public sewer line, MCLA 123.282(1); MSA 5.2769(152) (1), is arbitrary, irrational and unsupported by a compelling state interest. They argue further that this provision vested inordinate discretionary power in the township board to 'gerrymander' the precise location of the public system so as to absolve 'certain favored persons' of an obligation to tap into the system.

"Neither [*6] argument persuades us. In *Manistee Bank & Trust Co v. McGowan 394 Mich 655, 671; 232 NW2d 636 (1975),* the Michigan Supreme Court recently held that where a legislative classification is attacked on equal protection grounds, both the classification itself and the test with which to scrutinize the classification are to be weighed against a 'rule * * * of reason':

"'"* * * The Equal Protection Clause, like the Due Process Clause, is a quaranty that controls the reasonableness of governmental action". The classification must be a reasonable one, and it must bear a reasonable relation to the object of the legislation.'

"The Court, in *Manistee Bank & Trust, supra,* held that the validity of nonexperimental, timehonored legislation, which sets up an explicit exception to a general rule, should be gauged against a stricter 'substantial-relation-to-the-object test.' *Id,* see also *Schigur v. Secretary of State, 73 Mich App 239; 251 NW2d 567 (1977).* However, with respect to legislation of recent vintage which can fairly be dubbed 'experimental', the traditional equal protection test applied. *Schigur, supra, at 247-248.* Under this test, '"[a] statutory discrimination [*7] will not be set aside if any state of facts reasonably may be conceived to justify it"'. *Manistee Bank & Trust, supra, at 668,* quoting *Dandridge v. Williams, 397 US 471, 485; 90 S Ct 1153; 25 L Ed 2d 491 (1970).*

"In light of *Manistee Bank & Trust,* we hold *1972 PA 288* to be experimental legislation which has not 'been enforced for a sufficiently long period of time' for 'all the rationales likely to be advanced in its support' to have been developed. *394 Mich at 672.* We further hold the 200-foot scope of Act 288 to be a reasonable upper limit on the reach of the statute.

"In an area where there is a 'perceived need for experimentation', the Legislature is not constrained to adopt an all-or-nothing approach; it may instead proceed in piecemeal fashion. *Manistee Bank & Trust, supra, at 672.* Thus, we believe the Legislature could well have decided that the potential menace occasioned by the widespread use of septic tanks is best remedied by a 200-foot limitation 'as but the first experimental step in a legislative scheme

designed eventually to require' the abandonment of all septic tanks, wherever located. *Id.*"

Based upon these authorities, it is my opinion [*8] that the 200-foot standard is constitutional. The legislature, however, is not precluded by any constitutional limitation from adopting a more stringent standard. As the Court of Appeals in *Renne, supra,* observed, the abandonment of all septic tanks, wherever located, may eventually be required.

2. May a municipality adopt and enforce an ordinance compelling the connection of a structure into a sanitary sewage system where the structure is more than 200-feet distant from the public sewer system?

Where connection to public sewer system is necessary to protect public health, ordinances may be adopted and enforced requiring connection to existing public sewer systems even where the structures effected are more than 200 feet distant from the public sewer systems.

1972 PA 288, supra, § 7, provides:

"This act is in addition to and not in limitation of the power of a governmental agency to adopt, amend and enforce ordinances relating to the connection of a structure in which sanitary sewage originates to its public sanitary sewer system."

The quoted section is clearly indicative of the legislative intent. The act is not to be construed as a limitation of the power [*9] of municipal units of government to compel connection to public sewer systems. The State has not, by enactment of *1972 PA 288,* reserved the field of regulation to itself.

See the *Home Rule Cities Act, 1909 PA 179,* MCLA 117.1 *et seq,* MSA 5.2071; *1895 PA 215,* Ch XIV, MCLA 94.1 *et seq,* MSA 5.1757 *et seq,* relating to the cities of the fourth class n1; *1895 PA 215,* Ch VII, MCLA 67.1, MSA 5.1285; *1909 PA 278,* MCLA 78.1 *et seq,* MSA 5.1511 *et seq,* relating to "home rule" villages; *1945 PA 246,* MCLA 41.181 *et seq,* MSA 5.45(1) *et seq; 1947 PA 359,* MCLA 42.1 *et seq,* MSA 5.46(1) *et seq,* relating to charter townships.

n1 *1895 PA 215,* § 1 (c), MCLA 81.1c, MSA 5.1591 (3) provides:

"Effective January 1, 1980, a city incorporated under this act shall be deemed a home rule city as provided by Act No. 279 of the Public Acts of 1909, as amended, being sections 117.1 to 117.38 of the Michigan Compiled Laws. Until a charter is adopted pursuant to Act No. 279 of the Public Acts of 1909, as amended, this shall be deemed to be the charter of the city."

I further note that the municipal obligation is even more pervasive; to quote from *1929 PA 245,* MCLA 323.1 [*10] *et seq,* MSA 3.521 *et seq:*

"Sec. 6. (a) It shall be unlawful for any persons directly or indirectly to discharge into the waters of the state any substance which is or may become injurious to the public health, safety or welfare; or which is or may become injurious to domestic, commercial, industrial, agricultural, recreational, or other uses which are being or may be made of such waters; or which is or may become injurious to the value or utility of riparian lands; or which is or may become injurious to livestock, wild animals, birds, fish, aquatic life, or plants or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired.

"(b) The discharge of any raw sewage of human origin, directly or indirectly into any of the waters of the state shall be considered prima facie evidence of a violation of this section by the municipality in which the discharge

originated unless the discharge shall have been permitted by an order or rule of the commission. . . .

"(c) A violation of a provision of this section shall be prima facie evidence of the existence of a public nuisance and in addition to the [*11] remedies provided for in this act may be abated according to law in an action brought by the attorney general in a court of competent jurisdiction.

"Sec. 7. (1) After April 15, 1973, a person shall not discharge any waste or effluent into the waters of this state unless he is in possession of a valid permit therefor from the commission. . . ."

See also *Attorney General v. City of Grand Rapids, 175 Mich 503, 141 NW 534 (1913); People ex rel Stream Control Commission v. City of Port Huron, 305 Mich 153, 9 NW2d 41 (1943)*, injunction granted *323 Mich 541, 36 NW2d 138 (1949)*.

3. *Has 1961 PA 151*, MCLA 123.191 *et seq*, MSA 5.2767(101) *et seq* been superseded by provisions of *1972 PA 288, supra?*

1978 PA 75, approved May 22, 1978, and giving immediate effect, repealed *1961 PA 151, supra*. Therefore this question concerning reconcillation of *1961 PA 151, supra*, and *1972 PA 288*, [*12] *supra*, is moot.